REMARKS

Reconsideration of the application is respectfully requested.

For the record, Applicant filed an Amendment After Final Rejection on September 24, 2007, which included amendments to the Specification and Claims. It is Applicant's understanding from the Advisory Action issued on October 3, 2007 that all amendments set forth in the September 24, 2007 Amendment have been entered. Accordingly, Applicant presents the claims herein showing the previous amendments as being entered. Applicant requests an opportunity to enter any amendments which already have not been properly entered if Applicant's understanding is not correct.

Claims 1-8 are in the application. Through this amendment, claim 1 has been amended.

In the Official Action, the Examiner raised certain objections to a previously-filed Information Disclosure Statement, the drawings, the Specification, and claims 7 and 8. Applicant refers to the amendments and statements set forth in the September 24, 2007 response. The Advisory Action does not refer to any of these issues. It is respectfully submitted that in view of the previous amendment and statements, the objections have been overcome.

In the Official Action, the Examiner rejected claims 6-8 under 35 U.S.C. §112. It is noted with appreciation that the Advisory Action indicates that the previous amendments have overcome this particular rejection.

The Examiner rejected claims 1-8 under 35 U.S.C. §102(e) as being allegedly anticipated by Barker et al. (U.S. Patent No. 6,569,115). In particular, the Examiner relied on the embodiment shown in Figs. 13-18.

Barker et al. is directed to a pre-filled retractable needle injection device. With reference to the embodiment of Figs. 13-18, a vial 170 is provided in which is disposed medicinal fluid. (Col. 9, ll. 58-59). A plug 90 is disposed in the vial 170 "having a plurality of axially-spaced circumferential ribs 192 that form a fluid-tight seal between the plug 190 and the internal surface of the vial 170." (Col. 9, ll. 62-25). The medicinal fluid is accessed by a rear needle 116 which pierces the plug 190. (Col. 10, ll. 3-13). At all times, the plug 190 maintains a fluid-tight seal with the vial 170. (See, e.g., col. 10, ll. 24-26, ("Additionally, the circumferential ribs 192 maintain a fluid-tight seal between the plug and vial while the vial slides over the plug.")). The medicinal fluid is only accessed by the rear needle 116 piercing the plug 190.

Claim 1 is directed to a device for injecting a product which includes "a container containing the injectable product" and "a piston engaged in the container" which is shaped to

have "a first configuration" in which "it closes the container in such a way as to isolate the product from the environment outside this container" and "a second configuration" in which "it allows the product to pass out of the container without said piston being pierced". Barker et al. fails to disclose or suggest such an arrangement. Specifically, Barker et al requires the plug 190 to be pierced by the rear needle 116 to access fluid. There is no other mode or manner by which the fluid is able to by-pass the plug 190. In contrast, the piston of claim 1 has two different configurations, one which permits flow without being pierced, and one which does not permit flow. Barker et al. requires a needle piercing the plug 190 to obtain a fluid flow. Further, Barker et al. specifically requires a fluid-tight seal to be defined about the plug 190, and, as such, there is no basis to modify Barker et al. to avoid such.

As further bases of patentability, claim 2 specifically states that "the piston is so shaped that, in said second configuration or position, it allows the product to pass between itself and the container" and claim 3 states that "the piston comprises at least one peripheral zone that is able, in said first configuration of the piston, to press tightly against the wall of the container, and, in said second configuration of the piston, to withdraw under the pressure of the injectable product to allow the latter to pass it." These features are clearly not present in Barker et al. As indicated above, Barker et al. provides a fluid-tight seal about the plug 190. There is no provision to have a product pass between it and the container as set forth in claim 2. Moreover, the plug 190 does

not have a peripheral zone which withdraws under pressure as set forth in claim 3. It is respectfully submitted that claims 1-8 are patentable over Barker et al.

Favorable action is earnestly solicited. If there are any questions or if additional information is required, the Examiner is respectfully requested to contact Applicant's attorney at the number listed below.

Respectfully submitted,

Ludomir A. Budzyn
Registration No.: 40,540
Attorney for Applicant

HOFFMANN & BARON, LLP
6900 Jericho Turnpike
Syosset, New York 11791
(973) 331-1700